BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BARBARA MOOREHOUSE	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,437
MIDLAND BRAKE, INC.	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

The respondent and Workers Compensation Fund requested review of the Award dated July 3, 1997, entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument on December 22, 1997.

APPEARANCES

Timothy A. Short of Pittsburg, Kansas, appeared for the claimant. Garry W. Lassman of Pittsburg, Kansas, appeared for the respondent. William L. Phalen of Pittsburg, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits for a 45.45% work disability. Both respondent and the Workers Compensation Fund (Fund) requested the Appeals Board to review the issue of the nature and extent of claimant's

injury and disability. The respondent and Fund contend the Administrative Law Judge erred in calculating claimant's post-injury average weekly wage. Also, the respondent and Fund contend claimant's benefits should be limited to the functional impairment rating because claimant allegedly voluntarily left respondent's employment for reasons unrelated to any injury she sustained while working for the respondent.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds as follows:

(1) Respondent manufactures receptacles, electrical parts, and brakes for tractor-trailer units. Claimant began working for the respondent in 1975 as an assembler. In 1976 or 1977, claimant became a lead person but still spent 40 to 80 percent of her time assembling parts. In 1984, claimant transferred to a shipping clerk position. Because that work was too heavy, in 1987 claimant returned to assembling. As an assembler, claimant performed repetitious work with her hands and arms.

(2) In July 1987, after returning to assembly, claimant first sought medical treatment for her upper extremities. One symptom claimant had at that time was numbness in her hands. Despite her complaints, claimant continued to work for respondent and her symptoms progressively worsened. In 1988, 1989, and into part of 1990, claimant sought medical treatment for problems with her shoulders, arms, and neck almost monthly. In July 1989, claimant missed work for a period of time because of pain in her shoulders and hands. In 1990, claimant noticed an increase in the intensity of pain in her elbows. Also in 1990, a doctor diagnosed fibromyalgia. After being diagnosed as having bilateral carpal tunnel syndrome, claimant terminated her employment with respondent in October 1993.

(3) Because of claimant's repetitive work activities, the Administrative Law Judge found that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent. The Administrative Law Judge selected claimant's last day of work for respondent, or October 15, 1993, as the appropriate date of accident for purposes of computing benefits for the period of accidental injury in question. Because the parties have not appealed those findings, the Appeals Board adopts them as its own.

(4) As a result of the work claimant performed for the respondent, claimant developed a chronic overuse syndrome in her hands and wrists. In addition, claimant has fibromyalgia which is responsible for the pain in her hips, neck, and arms. Although fibromyalgia is a disease process of unknown etiology, it is known that persons with the disease are more susceptible to injury caused by repetitive motion. The parties stipulated that claimant has a 5 percent whole body functional impairment.

(5) Because of the chronic overuse syndrome, and excluding the fibromyalgia, Dr. Bernard M. Abrams testified claimant should observe the following medical restrictions:

no repetitive activities with either hand and limit occasional lifting to 10 to 20 pounds. Dr. Carabetta, on the other hand, testified that claimant did not have any restrictions for the carpal tunnel syndrome which he initially diagnosed but which he felt had resolved. He attributed claimant's ongoing symptoms to her fibromyalgia but recognizes that claimant risks a recurrence of the carpal tunnel syndrome if she would return to repetitive activities.

(6) After leaving respondent's employment on October 15, 1993, claimant took a significant cut in pay and began working for her husband as a receptionist earning $200 per week. In 1994, 1995, and 1996, claimant earned $7,800, $11,430, and $12,350, respectively. When claimant testified at the regular hearing held in May 1997, she was earning $225 per week and was being provided health insurance which cost $260.96 per month and retirement benefits which cost $100 per month. Claimant worked for her husband approximately two years before she began receiving the retirement pension.

(7) On the date of accident, claimant's average weekly wage was $390.20 which is comprised of $315.85 base wage and $74.35 in insurance benefits. Although claimant received a retirement benefit from respondent the cost of that benefit is not available and, therefore, cannot be included in the wage computation. As indicated by claimant's 1994, 1995, and 1996 W-2s, claimant's post-injury average weekly earnings equal $202.44 per week. Adding the weekly value of claimant's health insurance and retirement benefits yields a $285.74 post-injury average weekly wage. Therefore, when comparing claimant's $390.20 pre-injury average weekly wage to her $285.74 post-injury average weekly wage, the Appeals Board finds a difference of 27 percent.

CONCLUSIONS OF LAW

Because hers is an "unscheduled" injury, claimant's entitlement to permanent partial disability benefits is governed by K.S.A. 44-510e which provides in pertinent part:

> The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. . . . An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury.

Respondent and the Fund contend claimant's permanent partial disability benefits should be limited to her functional impairment rating because she terminated her employment with respondent for personal reasons unrelated to any injury sustained at work. They contend that claimant's alleged inability to work is the result of her nonwork-related fibromyalgia rather than a work-related injury. The Appeals Board disagrees.

The Appeals Board finds that claimant more probably than not has developed a chronic overuse syndrome in her hands and wrists as the result of the work activities she performed for the respondent. Claimant terminated her employment with respondent because of the physical problems she was having with her hands and wrists. The Appeals Board also finds that claimant's work as an assembler violated what are determined to be her permanent work restrictions and limitations. Even Dr. Carabetta indicated claimant had an increased risk for the recurrence of carpal tunnel symptoms if she were to perform repetitive activities.

Despite the above finding, the Appeals Board is not persuaded that claimant has lost the ability to perform 71.8 percent of her former job tasks as Dr. Abrams testified. Claimant herself has cast some doubt on that opinion when she testified she felt she could perform the job tasks of ordering parts, assigning work to others, a portion of the task identified as packing parts, completing paper work, and operating a fork lift.

When considering the entire record, the Appeals Board finds that claimant's task loss lies somewhere between the zero percent provided by Dr. Carabetta and the 71.8 percent provided by Dr. Abrams. The Appeals Board finds claimant's task loss is 36 percent.

Respondent and the Workers Compensation Fund also contend claimant has failed to exercise good faith in finding appropriate employment after she resigned her employment with respondent. The Appeals Board disagrees. Although claimant now works for her husband as a receptionist, the job duties appear appropriate considering claimant's restrictions and limitations. Also, it would appear claimant's husband would accommodate her on the days when her symptoms might flare. When considering the entire record, the Appeals Board finds claimant has exercised good faith in obtaining appropriate employment after she left respondent's employ.

As required by K.S.A. 44-510e, the Appeals Board averages the 36 percent task loss with the 27 percent difference in pre- and post-injury wages and finds that claimant has a 32 percent permanent partial disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated July 3, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Barbara Moorehouse, and against the respondent, Midland Brake, Inc., and the Workers Compensation Fund for an accidental injury which occurred October 15, 1993, and based upon an average weekly wage of $390.20 for 132.8 weeks at the rate of $260.15 per week or $34,547.92, for a 32% permanent partial general disability, which is all currently due and owing.

The Appeals Board hereby adopts the remaining orders set forth in the Award by the Administrative Law Judge to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
William L. Phalen, Pittsburg, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director